

1
2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE CENTRAL DISTRICT OF CALIFORNIA
8

9 KEVIN DEON BRAZIER,

10 Petitioner,

11 v.

12 EDWARD BORLA,

13 Respondent.
14
15

NO. EDCV 24-2357-MRA (AGR)

ORDER ACCEPTING FINDINGS AND
RECOMMENDATION OF
MAGISTRATE JUDGE

16 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of
17 Habeas Corpus ("Petition"), the other records on file herein, the Report and
18 Recommendation ("Report") and the Objections. Further, the Court has engaged
19 in a *de novo* review of those portions of the Report and Recommendation to
20 which objections have been made.

21 Petitioner points out that the Report contains a typographical error in
22 describing Ground One of the Petition. On page 13, line 8 of the Report, the word
23 "instruction" should read "intrusion." (Report at 13:8; Petition at 7, Ground One.)
24 Petitioner has not shown that correction of the typographical error alters the
25 Report's analysis of Petitioner's claim based on the resentencing proceedings
26 under Cal. Penal Code § 1172.6. Moreover, Petitioner's citation to *McKaskle v.*
27 *Wiggins*, 465 U.S. 168 (1984), does not support his claim. The *McKaskle* opinion
28 addressed standby counsel at trial and noted that "the appearance of a *pro se*

1 defendant's self-representation will not be unacceptably undermined by counsel's
2 participation outside the presence of the jury." *Id.* at 179. The "trial judge . . .
3 must be considered capable of differentiating the claims presented by a *pro se*
4 defendant from those presented by standby counsel." *Id.* The judge who
5 presided at the § 1172.6 proceedings explained the scope of such proceedings to
6 Petitioner.

7 Petitioner contends the Report incorrectly states that the trial court "denied
8 Petitioner's request to strike the petition for resentencing" and "denied
9 resentencing." (Report at 4:8-10.) The Report cites to the transcript of
10 proceedings, which contains the following questions and answers between the
11 prosecutor and court: [Q] "So the defendant's motion to strike the petition and
12 resentence is denied?" [A] "Yes." [Q] Is the Court denying the defendant's
13 petition for resentencing based upon the fact that he received no applicable jury
14 instructions [under § 1172.6]?" [A] "Yes. I'm taking judicial notice of the court
15 record." (Dkt. No. 13-5 at 51:17-19.) Petitioner has not shown that the Report is
16 incorrect.¹

17 The Court accepts the findings and recommendation of the Report except
18 for the typographical errors.

19 IT THEREFORE IS ORDERED as follows:

20 (1) Respondent's motion to dismiss the Petition for Writ of Habeas Corpus
21 is GRANTED;

22 (2) Ground One is dismissed.

23 (3) Grounds Two, Three, and Four are dismissed without prejudice to
24 Petitioner's ability to file an Application for Leave to File Second or Successive

25 ¹ Petitioner also contends that the Report incorrectly states that the
26 *Marsden* records are sealed. (Report at 4:15-5.) The Report recites the state
27 court's ruling that: "The request to unseal the Marsden hearings at this stage of
28 the proceedings is denied . . ." (Dkt. No. 13-5 at 31:20-22.) After explaining the
scope of inquiry under § 1172.6, the state court reiterated: "The request to unseal
the Marsden hearing is denied for the reasons that I've already articulated." (*Id.*
at 35:3-4.)

1 Petition Under 28 U.S.C. § 2254 with the proposed § 2254 second or successive
2 petition in the Ninth Circuit.

3 (4) Petitioner's motion to transfer the existing Petition to the Ninth Circuit is
4 denied because the Petition includes Ground One, which is not second or
5 successive. (Dkt. No. 16.)

6 The Clerk is directed to send Petitioner Ninth Circuit Form 12 (Application
7 for Leave to File Second or Successive Petition) and a form petition under
8 § 2254.

9
10 DATED: July 08, 2025


11 MONICA RAMIREZ ALMADANI
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28